



# Five Key Themes for Commercial Contracts in 2026

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# Agenda

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- Drafting for the use of AI
- Revisiting Data Protection Compliance
- Delivering and receiving Tech Solutions
- Providing for Force Majeure
- Using Third Party Solutions

# 1



## **Drafting for the use of AI: Governance, Liability, and Commercial Implications**

# Key Questions

- *What are the key provisions which a business should look out for when entering into a contract for the supply of an AI-enabled solution?*
- *How do businesses mitigate the legal risks associated with the use of AI by their service providers?*

# Pre-Contract

- AI Governance
- Customer Requirements
- Due Diligence

# Contract Review/Negotiation - Part 1

- Service Description
- Warranties
- Exclusions

# Contract Review/Negotiation - Part 1

*1.2 Input and Output. Your Users may enter Customer Data and other information into the [AI Services] (“Input”) and may receive output from certain [AI Services] based on that information (“Output”). You are solely responsible for the accuracy and quality of all Input. You are solely responsible for your use of Output and evaluating Output for accuracy, including by determining when to utilize human review to confirm Output’s accuracy. You acknowledge that Output may not be unique and other customers may receive similar content from the [AI Services].*

# Contract Review/Negotiation - Part 2

- Intellectual Property
- Data Protection
- Liability
- Indemnification

# Contract Review/Negotiation - Part 2

*3.0 In addition to your obligations under section 10.2 (Indemnification by You) of the Main Agreement and subject to section 10.3 (Indemnification Procedure) of the Main Agreement, you will defend us and our Affiliates, officers, directors, employees, and agents (at your expense) in any third-party claim alleging that your collection or use of Input or Output infringes the Intellectual Property Rights of a third party or violates applicable law. If a settlement is reached or there is an adverse judgment in any such claim, you shall pay the settlement costs or final judgement awarded by a court with respect to such claim.*

# Operation

- Deployment and UAT
- AI Governance
- Monitoring

# Summary

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- AI Governance
- Service Scoping
- Intellectual Property
- Data Protection
- Liability and Indemnification

# 2



## Revisiting Data Protection Compliance:

what is new for controllers and processors

# The Legal Framework of UK Data Protection

- The UK GDPR
- Data Protection Act 2018
- Data (Use and Access) Act 2025

# DUA Act – Overview of Changes

- Targeted reforms to UK GDPR framework
- Greater flexibility for organisations, with increased focus on accountability and outcomes
- Specific changes, including:
  - legitimate interests
  - data subject access requests
  - international data transfers

# Legitimate Interests

- Separate from 'recognised legitimate interests', which applies to areas like fraud prevention and security
- New guidance provides greater certainty for organisations
- Direct Marketing

# Data Subject Access Requests

- 'Reasonable and proportionate' search standard
- Greater flexibility in handling complex requests
- Clarity of refusing manifestly unfounded or excessive requests
- Emphasis on practicality

# International Data Transfers

- Risk-based approach to adequacy
- ‘Not materially lower’ protection standard
- Greater flexibility in assessing destinations
- Support of global data flows

# Summary

- Increased flexibility for organisations
- Greater reliance on judgment
- Stronger accountability expectations

# 3



## Delivering and Receiving Tech Solutions:

considerations for vendors and customers

# Key Clauses

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- Payment structures
- Liability and risk allocation
- Intellectual property and licensing

# Payment Structures

- Usage-based pricing
- Service Levels and Service Credits
- Changes to the Service

# Liability and Risk Allocation

- Caps on liability
- Exclusions of liability
- Indemnities
- Service credits and sole remedies
- Case specific considerations for different tech projects

# Drax v Wipro

33.2 Subject to clause ... 33.3, ... **the Supplier's total liability to the Customer** ... arising out of or in connection with this Agreement ... shall be limited to **an amount equivalent to 150% of the Charges paid or payable in the preceding twelve months from the date the claim first arose**. If the claim arises **in the first Contract Year** then the amount shall be calculated as **150% of an estimate of the Charges paid and payable for a full twelve months**.

33.3 The Supplier's total aggregate liability arising out of or in relation to this Agreement **for any and all claims related to [breach of a data protection clause]** shall in no event exceed **200% of the Charges paid or payable in the preceding twelve months from the date the claim first arose or £20m (whichever is greater)**.

# Model Services Contract Approach

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to [150%] of the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to [150%] of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to [150%] of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

# Intellectual Property and Licensing

- Ownership v Licence
- Custom Development
- Open Source Software



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# Providing for Force Majeure: dealing with the unexpected

# Force Majeure

- Why is a force majeure clause needed?
- How are they used in practice?
- Why does the drafting matter?

# CO<sub>2</sub> Supplies

- Reasons for shortages, and effects
- Allocation, Suspension and Termination Rights
- Supply chain alignment
- Alternatives to force majeure

# Payment Obligations

1. *'the affected party shall be excused from performance of its obligations for the duration of the force majeure event'*
2. *'the obligations of the parties shall be suspended to the extent affected by the force majeure event'*
3. *'the customer shall not be obliged to pay charges for services not supplied during the force majeure period'*

# 5



**Using Third Party Solutions:  
services that integrate with, or depend on,  
third party solutions**

# Responsibility for Third-Party Performance

- Degree of responsibility for third-party performance
- Contract may be silent
- Contract may exclude liability
- Contract may specify limited obligations

# Supply Chain Alignment

- Flow-down requirements
- Practical reality
- Service Levels
- Contract change
- Data Protection

# Change

- Flexibility for the vendor, protections for the customer
- Business Continuity
- Exit



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